

# The Aadhaar verdict will help us leapfrog to a more equitable society, writes Nandan Nilekani

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Cricket

The apex Court has supported the inclusive vision of the project first defined in 2009, and upheld its validity



A woman goes through the process of finger scanning for the Unique Identification (UID) database system, also known as Aadhaar, at a registration centre in New Delhi, India, January 17, 2018(Reuters)

A case which saw one of the longest hearings in the history of the Supreme Court of India came to an end on Wednesday. The verdict is out, and it is clear: the Supreme Court has supported the inclusive vision of the Aadhaar project first defined in 2009, and upheld its validity. Aadhaar has undergone tremendous scrutiny over the last nine years, as it should in a democratic society like ours. The result is a stronger, more people-centric Aadhaar.

Over the last few years, the fundamental principles of the Aadhaar project have themselves come into question. There has been speculation and assertion of exclusion and

the effort to create a “cradle to grave” surveillance-state. What I’m most happy about is that the court took a holistic view and recognised the core principles that form the bedrock on which Aadhaar was conceptualised.

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First, the majority judgment has recognised that while many identity documents exist, Aadhaar is distinct because of its uniqueness. In a light-hearted opening remark, Justice Sikri said that being unique is being better than being best: because when you are best, you are number one, but when you are unique, you are the only one. This validates that even though many IDs existed, their existence did not undermine the need for Aadhaar.

Second, all five judges, including the one who gave a dissenting judgement, Justice DY Chandrachud, agree that the state’s interest in the creation of Aadhaar is legitimate. The targeted delivery of welfare, benefits and subsidies from the consolidated fund of India to their intended beneficiaries is an important state aim, and a unique identifier like Aadhaar is a proportionate response to that need.

Third, the majority judgment recognised that Aadhaar “qualifies as a document of empowerment”. It gives the ability to the marginalised and underserved in our country to claim their rightful benefits and entitlements. There have been some stories recently that Aadhaar authentication itself has become a means of exclusion. The Supreme Court recognised that while it is unfortunate that any exclusion exists, the magnitude of exclusion is close to 0.2%. It is better to work towards reducing the 0.2% to 0

than to jeopardise the 99.8%, many of whom are among the most marginalised.

Fourth, the Supreme Court summarily rejected that Aadhaar is used for surveillance. It looked at the facts to realise that Aadhaar truly believes in the idea of minimal data collection. The demographic and biometric data collected are minimal, the authentication logs do not carry purpose of authentication and UIDAI regulations have upheld the principles of minimal data collection and privacy by design. In such a scenario, the claim that UIDAI enables profiling or a surveillance state, was rejected by the court. The Court has however built in a safeguard for the national security exception and strengthened the individual with the direction to amend S 33(2) of the UIDAI Act.

Fifth, once again the Supreme Court has said that India requires a comprehensive data protection and empowerment regime. While Aadhaar attracted a disproportionate amount of noise in the media, the privacy issues in this country do not start and end with Aadhaar. I have been requesting the government for such a law since 2010. The recently released Justice Srikrishna Committee report is an attempt to further this, and I am glad the Supreme Court has also recognised the importance of a law and a regulator.

The issues addressed in the judgment are fundamental to the Indian polity — privacy, protection against overreach by the state and private parties and most importantly, identity and one's right to access basic services. The message from the court is about “balance”, “purpose”, “proportionality” and “regulation”.

The bench has commented on distinct issues in the judgement — at the centre of each of these is the individual for whose sake Aadhaar was conceptualised. Every amendment directed namely, S. 33(2), S.47 and S.57 is anchored on the central idea of strengthening the individual's place vis-a-vis institutions. It also reinforces the idea of the type of relationship that institutions of power must have with the people — not with a “suspicion” or “exclusion” mindset but with an “inclusion” mindset. The judgment urges us to leverage the best of home-grown technology to help the underserved sections of Indian society leapfrog to a more equitable society and achieve their full human potential.

The judgment is 1,500 pages long and came after 38 days of hearing. There are many nuances in the judgment that we will understand and unpack over the next few days. For now, we must move ahead by building on this foundation and deliver on our promise to the marginalised. As we approach the 149th birth anniversary of Mahatma Gandhi, it would be fitting to remember his message: “Recall the face of the poorest and weakest man you have seen, and ask yourself if this step you contemplate is going to be any use to him”. The Supreme Court on Wednesday upheld the vision of our founding father and the promise of our Constitution.

***Nandan Nilekani is the first chairman of the Unique Identification Authority of India***

***The views expressed are personal***